THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 12th day of September,2007

W.P.No.33947 of 1997

Between:-

M/s.Preethi Foods, E-5,
Industrial Estate, Karimnagar,
rep.by its Working Partner
K. Venkatachalam … Petitioner

and

The Authority under the Minimum
Wages Act-cum-the Asst. Commissioner
Of Labour, Karimnagar, Karimnagar
District and another … Respondents

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ORAL ORDER:

This Writ Petition is filed challenging the Order dated 3-11-1997 made in M.W.Case No.70 of 1996 on the file of the Authority under the Minimum Wages Act and Assistant Commissioner of Labour, Karimnagar, whereunder the application under Section 20(2) of the Minimum Wages Act,1948, filed by the Assistant Labour Officer, Circle-I, Karimnagar, after hearing, was ordered in favour of 47 workmen granting an amount of Rs.1,31,418.50 towards difference of wages payable for the periods mentioned in Ex.A1, apart from granting one time penalty, making it to a total of Rs.2,62,837/-.

Petitioner is the employer/opposite party. Respondent No.2 is the Assistant Labour Officer, Circle-I, Karimnagar, who filed an application under Section 20(2) of the Minimum Wages Act,1948 (for short 'the Act') before the 1st respondent-Authority under the Minimum Wages Act and Assistant Commissioner of Labour, Karimnagar stating that certain workmen employed by the employer have not been paid the minimum wages as required under the Governmental Orders issued from time to time; thus, they are entitled for difference of wages for the period from 1-4-1995 to 31-3-1996. Whereas, the opposite party/petitioner herein filed a written statement denying the allegations made by the applicant/2nd respondent herein and stating that all the wages paid under different heads, if pooled together, would show that the workmen have been paid more than what is contemplated under

the Minimum Wages Act and the Governmental Orders issued thereunder.

On behalf of the applicant, P.Ws.1 and 2 were examined and Exs.A1 to A9 were marked. For the opposite party/employer, R.Ws.1 and 2 were examined, but no documents were marked. After a detailed consideration of the entire evidence on record, the Authority held that the amounts paid under different heads cannot be pooled together for the purpose of calculating the minimum wages as per the eligibility of the workmen, and particularly the Overtime Allowance (OT), Attendance Benefit Allowance (ABA), Production Allowance (PA) shall be deducted and exact wages paid daily shall be taken into consideration for the purpose of calculating minimum wages as per the Rules and thus ordered the petition. Challenging the said Order, the present Writ Petition is filed.

Learned counsel for the petitioner strenuously contended that the Order passed by the 1st respondent-Authority is perverse, arbitrary and illegal. The 'wages' as defined under the Act were not taken into consideration and the Authority erroneously held that there was no question of taking into account the amounts under different heads i.e., OT, ABA and PA, for the purpose of calculating minimum wages, and even after deducting the overtime allowance (OT), production allowance and attendance benefit allowance, which were paid to the workmen, it was more than the minimum wages as contemplated under the G.Os issued by the Government from time to time for the scheduled employment.

Whereas, learned Government Pleader appearing for the respondents supported the Order passed by the Authority and stated that the Authority has passed a cogent and reasoned order and it does not call for interference of this Court under Article 226 of the

Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

At the outset, I am of the opinion that the 1st respondent-Authority has not committed any error whatsoever calling for interference of this Court under Article 226 of the Constitution. The Authority discussed each and every aspect as under:

> "On the third issue the applicant contended that the amounts shown in Col.6 to 11 are not part of the wages but only incentives and the wages mentioned at Col.5 are the actual wages, which are less than the wages notified by the G.O. as per the Act. Whereas, the opposite party states that the amounts mentioned in 6 to 11 columns of wage register are the part of total wages and this total wage would be higher when compared to the minimum wages fixed under the Act. Therefore, denied the payment of wages to workers. However, P.W.1 in his deposition stated that the abbreviation 'ABA' shown at Col.7 of February,1996 wage register stands for attendance benefit allowance and paid to those who works for (26) days. The (R.W.2) also admitted in his chief examination that attendance allowance of Rs.100/- is paid to him, if he works for (26) days in a month. Further, the representation dated 10.1.1997 given by the (47) workers also states that this attendance benefit is paid to those employees, who works for (26) days in a month. Therefore, it is very clear that attendance allowance was paid to the workers to encourage them to attend the duties regularly, which is nothing but a scheme introduced by the Management. Therefore, within the definition of the Act any amounts payable to the workers under the scheme are not part of the wages. Hence, I do not accept the argument of opposite party that attendance allowance is part of wage.
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> As regards to the other allowances (P.W.1) stated that this amount specified as 'PA' in the wage register stands for production allowance, which is variable from month to month and this amount was paid to those workers, who are having more than one year service. But, the opposite party contended that this allowance was paid to cover the cost of living allowance and is part of the total wage. But, in the representation dated 10.1.1997 which is marked as Ex.A3, the (47) workers stated that this amount was nothing but overtime allowance. The applicant also argued that the wage slips issued to certain employees, which are marked as Exs.A4 to A7, show that the header 'OT' was used in some wage slips, while in

some other, the header 'PA' is used and both amounts stands for the same i.e., overtime allowance. On my examination of the wage slips marked as Exs.A4 to A7 the header 'OT' is used in three wage slips and in one wage slip, it is mentioned as 'PA'. Therefore, I am satisfied that the amount paid to the worker under the header 'PA' or 'OT' were one and the same. Hence, this amount is not part of the wage as per the Act. Similarly, the other allowances mentioned under the header 'OTHERS' of wage slips are nothing but amount paid towards meals and cleaning allowance, paid to the workers depending upon the necessity as per the representation dated 10.1.1997 of workers. These amounts are not paid to all the workers. Therefore, I understood that these amounts are paid to the workers to meet the special expenses like, meals, cleaning allowance (additional work) etc., depending upon the necessity. Therefore, any amount paid to defray special expenses by nature of employment are not part of the wages as per Sec.2(h)(iv) of the Act. Further, (R.W.1) admitted P.F. amounts are made on wage rates mentioned in Col.No.5 of wage register only."

From the above, it is clear that the Authority has meticulously dealt with each and every argument advanced by the petitioner/opposite party and also gave reasons, to say, that allowances like, PA, ABA and OT were all mixed and pooled together to show that the workmen were being paid more than the minimum wages as required under the law. The Authority has passed a detailed reasoned order explaining each and every head of account, which does not fit into the definition of 'wages' and found that after deleting, ABA and OT/PA, the workmen were not paid minimum wages as required under the Act. The Authority rightly found that the said allowances are paid to the workers to meet the special expenses like, meals, cleaning etc., depending upon the necessity and they are not part of the wages as per Section 2(h)(iv) of the Act. As such, the contention of the learned counsel for the petitioner that the 1st respondent erred in not taking into consideration the said allowances for the purpose of calculating the minimum wages cannot be accepted. Therefore, I am of the opinion that the Labour Court has not

committed any error in coming to the conclusion that the workmen are entitled for an amount of Rs.1,31,418.50 towards difference of wages payable to them for the period mentioned in Ex.A1.

Learned counsel for the petitioner also contended that there was no delay in payment of wages and the workers without approaching the Management immediately, had approached the Assistant Labour Officer, who filed the present case. In fact, absolutely there was no delay in payment of wages. Assuming that the wages were not properly calculated, it was only a mistake on the part of the Management and, therefore, imposing with or mulcting the petitioner with one time penalty does not arise in a case of this nature, where no delay was caused.

I am in full agreement with the submissions made by the learned counsel for the petitioner. Therefore, I am inclined to hold that the workmen are not entitled for one time penalty as compensation. As such, the Order passed by the 1st respondent to that extent is set aside and the Order granting the amount of Rs.1,31,418.50 towards difference of wages is upheld.

Accordingly, the Writ Petition is allowed in part. No order as to costs.

12-9-2007

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